

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
6/15/2020 3:03 PM  
BY SUSAN L. CARLSON  
CLERK

No. 98296-1

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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GERRI S. COOGAN, the spouse of JERRY D. COOGAN,  
deceased, and JAMES P. SPURGETIS, solely in his capacity  
as the personal representative of the Estate of JERRY D.  
COOGAN, deceased,

*Petitioners,*

v.

GENUINE PARTS COMPANY and NATIONAL  
AUTOMOTIVE PARTS ASSOCIATION a.k.a. NAPA,

*Respondents, and*

BORG-WARNER MORSE TEC, INC. (sued individually and  
as successor-in-interest to BORG-WARNER  
CORPORATION), *et al.*,

*Defendants.*

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**RESPONDENTS GENUINE PARTS COMPANY AND NATIONAL  
AUTOMOTIVE PARTS ASSOCIATION'S JOINT  
REPLY IN SUPPORT OF MOTION TO STRIKE**

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## REPLY ARGUMENT

The Coogans correctly observe that GPC and NAPA raised conditional issues in their answer to the Coogans' petition for review, but the Coogans misunderstand the nature of conditional issues. GPC and NAPA made clear that they were not seeking review and did not want this Court to grant review; they were raising additional issues that the Court should address only if the Court grants the Coogans' petition. For that reason, GPC and NAPA never argued that their conditional issues met any of the RAP 13.4(b) criteria for granting review. In fact, GPC and NAPA emphasized that the existence of such issues was an additional reason why this Court should *deny* review altogether.

RAP 13.4(d) authorizes a reply where a respondent in its answer "seeks review" of an issue that the Court of Appeals resolved unfavorably to the respondent. In that circumstance, the respondent asks this Court to grant review and decide the issue raised in its answer regardless of whether the Court grants or denies review of the petitioner's issues.<sup>1</sup> The respondent's answer is, in part, a cross-petition for review, and the respondent must argue why the issues on which it seeks review meet the RAP 13.4(b) criteria for granting review. Indeed, this Court amended RAP

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<sup>1</sup> For example, a party satisfied with the "bottom line" relief received from the Court of Appeals might still choose to seek review of an issue arising out of the reasoning of the Court of Appeals' decision that could have adverse consequences for that party in other matters (*e.g.*, the interpretation of a contract clause found in several other contracts). Similarly, a party that prevailed against an opponent's appeal but was denied affirmative relief on their cross-appeal (*e.g.*, seeking reinstatement of a counterclaim for money damages) might choose to seek review of an issue pertaining to the reinstatement of that counterclaim.

13.4(d) in 1994 to clarify that a respondent may seek review in an answer to a petition, without having filed its own petition within 30 days of the Court Appeals' decision terminating review. K. TEGLAND, 3 WASH. PRAC., RULES PRACTICE RAP 13.4 at 221-22 (8th ed. 2014). The petitioner is then authorized under RAP 13.4(d) to file a reply to argue why the RAP 13.4(b) criteria are not met regarding the issues on which the respondent seeks review.

In contrast, a respondent who raises issues in response to a petition strictly on a conditional basis—to be reviewed only if the Court grants the petition—does not “seek review” under the plain language of RAP 13.4(d). A respondent raising conditional issues merely asks the Court to take up additional issues if it grants review as requested by the petitioner. Such a respondent does not maintain that its issues meet the RAP 13.4(b) criteria for granting review (if it does, then it is seeking review and not raising conditional issues). A reply in that circumstance can thus serve no legitimate purpose, and only provides the petitioner an unauthorized and procedurally unfair opportunity to address the merits.

RAP 13.4(d) plainly does not authorize a petitioning party to file a reply addressing issues raised in this fashion. The Coogans attempt to blur the distinction between raising additional issues and seeking review, as if every answer that raises additional issues seeks review. By definition, a respondent who raises an issue conditionally does not “seek review.” The Coogans neither cite authority nor offer persuasive argument to the contrary. The Coogans argue that they had to file a reply so that this Court

would not conclude from the absence of a reply that there was no opposition to review of GPC and NAPA's conditional issues. That reasoning is circular. If no reply is authorized, no such conclusion could rationally be drawn from the absence of a reply.

The Coogans also misread the history of amendments to RAP 13.4(d); the 2006 amendment confirms GPC and NAPA's interpretation of RAP 13.4(d). Since 1994, the rule has expressly allowed a respondent to "seek review" in its answer to a petition. Meanwhile, until 2006, the rule stated that the petitioner could file a reply to an answer that "raises a new issue." In 2006, this Court amended the rule to clarify that a reply is allowed only where the respondent "seeks review" in its answer. *See Motion to Strike* at 6-7 (citing authorities). The 2006 amendment thus confirms that a reply is not allowed where a respondent merely "raises a new issue," but *only* where the respondent "seeks review."<sup>2</sup>

This Court should strike the Coogans' unauthorized reply. And because there is no room for good-faith disagreement on the matter, a sanction is warranted.

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<sup>2</sup> The Coogans misread GPC and NAPA's argument as relying only on the "Drafter's Comment" to the 2006 amendment. *Answer to Motion to Strike* at 4. GPC and NAPA rely on the language of the rule, including the evolution of that language to establish the context for interpreting that language. *See Motion to Strike* at 6-8.

Respectfully submitted this 15th day of June, 2020.

**TALMADGE FITZPATRICK**

**CARNEY BADLEY SPELLMAN, P.S.**

By *s/ Philip A. Talmadge* \_\_\_\_\_

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## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 15th day of June, 2020.

S:/ Patti Saiden  
Patti Saiden, Legal Assistant

# CARNEY BADLEY SPELLMAN

June 15, 2020 - 3:03 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 98296-1  
**Appellate Court Case Title:** Gerri S. Coogan, et al. v. Genuine Parts Company, et al.  
**Superior Court Case Number:** 15-2-09504-3

### The following documents have been uploaded:

- 982961\_Answer\_Reply\_20200615150252SC155298\_9832.pdf  
This File Contains:  
Answer/Reply - Reply to Answer to Motion  
*The Original File Name was GPC NAPA Reply in Support of Motion to Strike.PDF*

### A copy of the uploaded files will be sent to:

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### Comments:

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